

## APPEAL NO. 010661

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 27, 2001. The hearing officer determined that: (1) the employer tendered a bona fide offer of employment to appellant (claimant); (2) the Texas Workers' Compensation Commission abused its discretion in appointing Dr. M as an alternate doctor; and (3) the claimant did not have disability from November 22, 2000, through January 22, 2001. The claimant has appealed these determinations. The respondent (self-insured) has responded, urging that the determinations of the hearing officer be affirmed.

### DECISION

Affirmed.

There was factual information before the hearing officer from which she could properly determine that the employer tendered a bona fide offer of employment to the claimant. The combination of the Work Status Report (TWCC-73) and offer of light-duty work (Self-Insured Exhibits Nos. 2 and 3), the "Supervisor's Limited Duty Checklist" which was signed by both the supervisor and the claimant (Self-Insured Exhibit No. 4), and testimony from the supervisor and the claims adjustor, provide ample evidence from which the hearing officer could conclude that the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6(b) (Rule 129.6(b)) were met.

Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The hearing officer determined that there was no disability from November 22, 2000, through January 22, 2001, and there was sufficient evidence in the record for her to make this determination.

The hearing officer determined that the claimant requested a change of treating doctor from Dr. H to Dr. M to obtain an off-work slip after Dr. H released the claimant to return to work. There was conflicting evidence as to the claimant's motive for requesting a change of treating doctor. There was testimony from which the hearing officer could conclude that the claimant requested the change to secure a new medical report, which is specifically prohibited under Section 408.022(d) of the 1989 Act.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

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Michael B. McShane  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge